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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Defendant
K2 PURE SOLUTIONS, LP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IMTIAZ KHAN, an individual, TIM MORRIS, an individual, RICK SEISINGER, an individual, and NEELESH SHAH, an individual, Plaintiffs, vs. K2 PURE SOLUTIONS, LP, a Delaware limited partnership, and DOES 1 through 10, inclusive, Defendants.	Case No. ________________ **K2 PURE SOLUTIONS, LP'S NOTICE OF REMOVAL OF ACTION**

NOTICE OF REMOVAL

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant K2 PURE SOLUTIONS, LP ("K2" or "Defendant") hereby files this Notice of Removal of the action filed as Case No. C 12-02458 in the Superior Court of the State of California, County of Contra Costa, on the basis of diversity jurisdiction. In support of removal, K2 states as follows:

1. On October 15, 2012, plaintiffs filed an action in the Superior Court of California, County of Contra Costa, entitled *IMTIAZ KHAN, an individual, TIM MORRIS, an individual, RICK SEISINGER, an individual, and NEELESH SHAH an individual, v. K2 PURE SOLUTIONS, L.P. a Delaware limited partnership, and DOES 1 through 10, inclusive*, Case No. C 12-02458, alleging claims for declaratory and injunctive relief (the "State Court Action").

2. The first date on which K2 received a copy of the Complaint filed in the State Court Action was October 16, 2012. A true and correct copy of the Complaint is attached hereto as Exhibit A.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon K2 in the State Court Action are attached to this Notice of Removal as Exhibit B. K2 files this Notice of Removal within the thirty-day time period required by 28 U.S.C. § 1446(b). K2's time to answer or respond to the Complaint has not yet expired.

4. Removal is proper because there is complete diversity of citizenship between the parties to this action—that is, no defendant is a citizen of the same state as any of the Plaintiffs—and the matter in controversy exceeds $75,000. *See* 28 U.S.C. §§ 1332(a) and 1441(a).

5. The State Court Action identifies Plaintiffs as Imtiaz Khan, Tim

Morris, Rick Seisinger, and Neelesh Shah, ("Plaintiffs") all of whom are former employees of K2 Pure Solutions, LP ("K2" or "Defendant"), and all of whom are natural persons (Ex. A, ¶ 1).

6. According to Plaintiffs' Complaint, plaintiffs Imtiaz Khan and Neelesh Shah are citizens of California residing in Contra Costa County, California (Ex. A, ¶¶ 3, 6). On information and belief, Khan currently resides at a temporary residence in Clark County, Nevada located at the Residence Inn Las Vegas South, 5875 Dean Martin Drive, Las Vegas, Nevada 89118.

7. According to Plaintiffs' Complaint, plaintiff Rick Seisinger is a citizen of Nevada residing in Henderson, Clark County, Nevada (Ex. A, ¶ 5).

8. According to Plaintiffs' Complaint, plaintiff Timothy M. Morris is a citizen of California residing in Contra Costa County, California (Ex. A, ¶ 4). On information and belief, Morris currently resides in Henderson, Clark County, Nevada.

9. Defendant is, and was at the time this action commenced, a Delaware limited partnership with its principal place of business located at 3515 Massillon Road, Suite 290, Uniontown, Ohio 44685. K2's general partner is K2 Pure Solutions GP, LLC, a Delaware limited liability company with its principal place of business located at 825 Third Avenue, 40th Floor, New York, NY 10022. K2's limited partners are Center K2 Holdings, Inc., a Delaware corporation, and K2 NQ Holdings, LLC, a Delaware limited liability company, both of which have their principal places of business located at 825 Third Avenue, 40th Floor, New York, NY 10022. Thus, for purposes of diversity jurisdiction, K2 is a citizen of Delaware and New York. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-80 (5th Cir. 2008).

10. Plaintiffs allege that they have no knowledge of the true names and capacities of the defendants sued herein as DOES 1 through 10, inclusive (Ex. A, ¶

10). Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious names "shall be disregarded" for purposes of determining removal jurisdiction.

11. Accordingly, complete diversity exists between Plaintiffs and Defendant. Plaintiffs are citizens of Nevada and California, and Defendant is a citizen of Delaware and New York.

12. The amount in controversy in this action exceeds the jurisdictional requirement of $75,000, exclusive of interest and costs. In their Complaint, Plaintiffs seek declaratory relief, injunctive relief, and restitution related to the written agreements they voluntarily entered into with K2 (Ex. A, § VI). "[I]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977); *Chapman v. Deutsche Bank Nat. Trust Co.*, 651 F.3d 1039, 1045 (9th Cir. 2011) (citing *Hunt*).

13. Here, the declaratory and equitable relief sought by Plaintiffs, former management employees of K2, could substantially harm the competitive position and profitability of K2's operations. Further, Plaintiffs, by virtue of their previous employment with K2, have learned valuable confidential information related to, *inter alia*, K2 manufacturing and operational processes. It was for this reason that K2 required Plaintiffs to sign non-competition and confidentiality agreements as a condition of their employment with K2, agreements which Plaintiffs now seek to invalidate through this suit. K2 has invested considerable time, effort, and financial resources in developing its trade secrets and confidential and proprietary information, the value of which substantially exceeds $75,000. By this suit, Plaintiffs threaten K2's investment in its intellectual property. Further, Plaintiffs allege that they are entitled to an unspecified amount of "restitution" resulting from Defendant's alleged acts and omissions (Ex. A, § VI). Thus, the amount in

controversy in this action exceeds the jurisdictional requirement of $75,000, exclusive of interest and costs. *See* 28 U.S.C. 1446(c)(2)(A)-(B) (stating that the defendant may state the amount in controversy in a removed action for purposes of determining diversity jurisdiction where the plaintiff has not done so or cannot do so).

14. Therefore, this Court has original jurisdiction over this action, and removal is proper because the amount in controversy exceeds $75,000 and there is complete diversity of citizenship between the Plaintiffs and the Defendant in this action. *See* 28 U.S.C. §§ 1332(a) and 1441(a) and (b).

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because this Court is within the district and division embracing the place where the State Court Action has been pending.

16. Pursuant to 28 U.S.C. § 1446(d), K2 will promptly serve Plaintiffs with written notice of the filing of this Notice of Removal, and K2 will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of California, County of Contra Costa.

17. In removing this action, K2 expressly reserves any and all available defenses in this action. K2 removes this action expressly subject to and without waiving its motion to dismiss or, alternatively, motion to stay this action pending the outcome of earlier-filed litigation pending against the Plaintiffs concerning the same issues raised in the later-filed State Court Action.

18. No jury demand was made in the State Court Action.

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WHEREFORE, providing notice as required by law, K2 respectfully requests the above-entitled action be removed from the Superior Court of California, County of Contra Costa, to this Court.

Dated: October 25, 2012

SMITH LILLIS PITHA LLP
Martin L. Pitha

By ______________________
Martin L. Pitha
Attorneys for Defendant
K2 PURE SOLUTIONS, LP

EXHIBIT A

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FILED
2012 OCT 15 P 4: 10

PER LOCAL RULE 5 THIS CASE IS ASSIGNED TO DEPT 39

SUMMONS ISSUED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

IMTIAZ KHAN, an individual, TIM MORRIS, an individual, RICK SEISINGER, an individual, and NEELESH SHAH, an individual,

Plaintiffs,

v.

K2 PURE SOLUTIONS, L.P., a Delaware limited partnership, and DOES 1 through 10, inclusive,

Defendants.

Case No.: C 12-02458

PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(EXPEDITED TRIAL DATE REQUEST PURSUANT TO C.C.P. § 1062.3(a))

I. INTRODUCTION

1. Plaintiffs Imtiaz Khan, Tim Morris, Rick Seisinger, and Neelesh Shah ("Plaintiffs") seek a declaration that their employment with Molycorp, Inc. ("Molycorp") does not violate any enforceable contractual or legal obligation to K2 Pure Solutions, L.P. ("K2"). Plaintiffs are former employees of K2. The State of California has an expressly stated and fundamental public policy against contracts that seek to restrain employee mobility. California law and policy protects California employees and ensures that every California citizen has the right to pursue lawful employment and enterprises of their choosing. Specifically, California Business and Professions Code Section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

2. Plaintiffs seek a declaration, pursuant to California Code of Civil Procedure Section 1060, that K2's purported non-competition and non-solicitation agreements with Plaintiffs are unlawful restraints of trade, and thus are invalid, unenforceable, and in violation of the fundamental public policy of the State of California. Further, any efforts by K2 to enforce the restrictive covenants violate California law and public policy, and constitute an unlawful business practice and an illegal restraint of trade. Plaintiffs thus seek orders from the Court enjoining K2 from interfering with Molycorp's employment of Plaintiffs.

II. PARTIES

3. Plaintiff Imtiaz Khan ("Khan") was hired by Molycorp to work at its facility in Mountain Pass, California on September 10, 2012 as a full-time employee. Khan currently works for Molycorp in Mountain Pass, California, and resides in Martinez, California. Khan is a resident of Contra Costa County, California

4. Plaintiff Tim Morris ("Morris") was hired by Molycorp to work at its facility in Mountain Pass, California on June 25, 2012 as a full-time employee. Morris currently works for Molycorp in Mountain Pass, California, and resides in Clayton, California. Morris is a resident of Contra Costa County, California.

5. Rick Seisinger ("Seisinger") was hired by Molycorp to work at its facility in Mountain Pass, California on June 30, 2012 as a full-time employee. Seisinger currently works for Molycorp in Mountain Pass, California, and resides in Henderson, Nevada.

6. Neelesh Shah ("Shah") was hired by Molycorp to work at its facility in Mountain Pass, California on October 8, 2012 as a full-time employee. Shah currently works for Molycorp in Mountain Pass, California, and resides in Walnut Creek, California. Shah is a resident of Contra Costa County, California.

7. Plaintiffs are informed and believe, and on that basis allege, that Defendant K2 is a limited partnership organized under the laws of the State of Delaware, with its headquarters and principal place of business located at 950 Loveridge Road, Pittsburg, California.

8. Defendant K2 and all defendants sued as DOES are collectively referred to herein as "Defendants."

9. Molycorp is a corporation organized under the laws of the State of Delaware, with its headquarters and principal place of business located at 5619 Denver Tech Center Parkway, Suite 1000, Greenwood Village, Colorado and a facility located at 67750 Bailey Road, Mountain Pass, California.

10. Plaintiffs do not know the true names and capacities, whether individual, partnership, corporate, associate, or otherwise, of defendants DOES 1 through 10, inclusive, and on that basis designate herein by such fictitious names. As the true names and capacities of defendants DOES 1 through 10, inclusive, or any of them, become known, Plaintiffs will seek leave to amend this Complaint to state their true names and capacities. Plaintiffs are informed and believe, and on that basis allege, that each of the defendants designated herein as DOES 1 through 10, inclusive, is in some way liable or responsible to Plaintiffs in connection with the events and/or transactions referred to in this Complaint.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiffs claims pursuant to California Code of Civil Procedure section 410.10 *et seq.*

12. Venue as to K2 is proper in this judicial district pursuant to California Code of Civil Procedure section 395(a) because a substantial part of the events giving rise to the claims herein occurred in Contra Costa County and because K2 resides in Contra Costa County.

IV. GENERAL ALLEGATIONS

13. K2 is a manufacturer of solutions used in water purification and disinfection, with its main facility in Pittsburg, California.

14. Plaintiffs are all former employees of K2. Khan became employed at K2 as Plant Manager in or around December 2007. Morris became employed at K2 as Site General Manager in or around October 2008. Seisinger became employed at K2 as Production Manager in or around September 2010. Shah became employed at K2 as Instrumentation and DCS Controls Engineer in or around June 2008.

15. Subject to Plaintiffs' at-will employment with K2, they each entered into a Noncomeptition and Confidentiality Agreement with K2 ("the Noncompetition Agreements") at or around their dates of hire.

16. Plaintiffs, upon hearing rumors that K2 was planning to lay off each of them, resigned from their positions at K2 in or around September and October 2012 in order to accept secure employment with MolyCorp. Each Plaintiff was independently recruited to work for MolyCorp by MolyCorp or through its agents.

17. Following their resignations, each plaintiff became employed by Molycorp at its Mountain Pass facility.

18. Molycorp is a rare earth mining, engineering, and processing company, with a flagship facility in Mountain Pass, California.

19. Shortly after plaintiffs Khan, Morris, and Seisinger became employed with Molycorp, K2 began threatening to interfere with Plaintiffs' employment with Molycorp.

20. On September 20, 2012, K2 sent letters to plaintiffs Khan, Morris, and Seisinger claiming they were in violation of the Noncompetition Agreements.

21. The Noncompetition Agreements as cited by K2 in its communications to Plaintiffs provide that for a period of one year following the termination of Plaintiffs' employment with K2,

they will not be employed by "any person or entity which (A) competes with [K2] in the manufacture, processing or distribution of bleach and related chemical products to commercial customers and (B) is located or has operations within 300 miles of any existing plant operated by [K2] or any location [K2] has specifically identified for a future plant." Noncompetition and Confidentiality Agreement, attached as Exhibit A, Section 2(c).

22. The Noncompetition Agreements further require that, for a period of one year following the termination of Plaintiffs' employment, they will not "[s]olicit, hire, recruit, or otherwise engage the services of any person who then currently is, or who at any time during [their] employment with [K2] was, an employee or independent contractor of [K2], or otherwise encourage or induce any such person to discontinue his or her relationship with [K2]." Ex. A, Sec. 2(c).

23. In its letters to Plaintiffs, K2 asserted Plaintiffs were in violation of these covenants and demanded that Plaintiffs abide by the non-compete and non-solicitation provisions.

24. In addition, David Cynamon ("Cynamon"), Executive Chairman at K2, called Khan on October 10, 2012 to urge him to leave his position at Molycorp and to return to his employment at K2. During this call, Cynamon made statements implying that there may be consequences if Khan did not return.

25. Plaintiffs are informed and believe and on that basis allege that K2 intends to prevent Molycorp from employing them and/or intends to seek damages or other relief against Plaintiffs based on the provisions of the Noncompetition Agreements with K2, due to Molycorp's employment of Plaintiffs and due to Plaintiffs' alleged recruitment of one another,

26. The Noncompetition Agreements are unenforceable under California law. K2's threats to enforce the Noncompetition Agreements violate California law and public policy, and constitute an unlawful business practice and an illegal restraint of trade. Furthermore, Plaintiffs did not recruit or solicit any K2 employee, including one another, to leave their employment with K2 to join MolyCorp or anyone else.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief)

27. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 26 of this Complaint as though set forth fully herein.

28. K2 has threatened to enforce the Noncompetition Agreements against Plaintiffs.

29. K2's Noncompetition Agreements and threats to enforce it are hampering Plaintiffs' ability to carry out the duties and responsibilities of their employment with Molycorp.

30. Plaintiffs contend that the Noncompetition Agreements are invalid and unenforceable as a matter of law under California Business and Professions Code Section 16600, and other provisions of California law. Business and Professions Code Section 16600 provides, in pertinent part, that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Plaintiffs also contend that they do not have any valid contractual or other legal obligation to K2 that would prevent Molycorp from employing any of the Plaintiffs at any time.

31. Plaintiffs are informed and believe, and on that basis allege, that K2 disputes the above contentions and contends otherwise. Accordingly, an actual, present, and justiciable controversy now exists between Plaintiffs and K2 with respect to the rights of Plaintiffs and Molycorp.

32. Plaintiffs are now entitled to a declaration of rights so that the parties will know their rights, duties, and obligations with respect to the Noncompetition Agreements. Plaintiffs request a judicial determination and declaration that their contentions set forth in Paragraph 30 are correct, that California law governs the enforceability of the Noncompetition Agreements, and that the Noncompetition Agreements are invalid and unenforceable under California law.

33. Plaintiffs are further entitled to an order enjoining K2 from interfering with their employment with Molycorp.

SECOND CAUSE OF ACTION

(Declaratory and Injunctive Relief)

34. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 33 of this Complaint as though set forth fully herein.

35. An actual, present, and justiciable controversy now exists between Plaintiffs and K2 with respect to the rights of Plaintiffs and Molycorp.

36. Plaintiffs contend that, to the extent that K2 would attempt to enforce the Noncompetition Agreements under California law to prevent Molycorp from employing Plaintiffs and/or would attempt to seek damages or other relief against Plaintiffs due to Molycorp's employment of Plaintiffs, the Noncompetition Agreement is overbroad and unenforceable because K2 cannot demonstrate that Plaintiffs' employment at Molycorp imperils any legitimate protectable business interests underlying the Noncompetition Agreements.

37. Plaintiffs are informed and believe, and on that basis allege, that K2 disputes the above contentions and contends otherwise.

38. Plaintiffs are now entitled to a declaration of their rights so that the parties will know their rights, duties, and obligations respecting the Noncompetition Agreements and Plaintiffs' employment with Molycorp. Specifically, Plaintiffs are entitled to a declaration that their contentions, as set forth in Paragraph 36 above, are correct.

39. Plaintiffs are further entitled to an order enjoining K2 from interfering with Molycorp's employment of Plaintiffs.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for relief and judgment against K2, as follows:

(a) For a declaration by the Court that: (1) California law governs the enforceability of the Noncompetition Agreements; (2) the Noncompetition Agreements are invalid and unenforceable against Plaintiffs; (3) Plaintiffs may work in their chosen profession; (4) Plaintiffs do not have any valid contractual or other legal obligation to K2 that would prevent Molycorp from employing Plaintiffs at any time; (5) to the extent that K2 would attempt to enforce the Noncompetition Agreements, the

Noncompetition Agreements are overbroad and unenforceable because K2 cannot demonstrate any legitimate protectable business interests underlying the Noncompetition Agreements, and (7) K2 is obligated to comply with Business and Professions Code Sections 16600;

(b) For a preliminary and permanent injunction restraining and enjoining K2 from enforcing the Noncompetition Agreements against Plaintiffs and to cease such unlawful and unfair practices as alleged herein above and proven to the Court at the time of trial;

(c) For restitution;

(d) For attorneys' fees under all applicable statutes and doctrines;

(e) For costs of suit incurred herein; and

(f) For such other and further relief as the Court may deem to be just and proper.

VII. REQUEST FOR EXPEDITED TRIAL DATE

Plaintiffs hereby request an expedited trial date pursuant to California Code of Civil Procedure Section 1062.3.

Dated: October 15, 2012

VALDEZ NOOR TODD & DOYLE LLP

TROY A. VALDEZ

Attorneys for Plaintiffs
IMTIAZ KHAN, *et. al.*

EXHIBIT B

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Attorneys for Plaintiffs
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PER LOCAL RULE 5 THIS CASE IS ASSIGNED TO DEPT 39

SUMMONS ISSUED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

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Plaintiffs,

v.

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Defendants.

Case No.: C 12-02458

PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(EXPEDITED TRIAL DATE REQUEST PURSUANT TO C.C.P. § 1062.3(a))

I. INTRODUCTION

1. Plaintiffs Imtiaz Khan, Tim Morris, Rick Seisinger, and Neelesh Shah ("Plaintiffs") seek a declaration that their employment with Molycorp, Inc. ("Molycorp") does not violate any enforceable contractual or legal obligation to K2 Pure Solutions, L.P. ("K2"). Plaintiffs are former employees of K2. The State of California has an expressly stated and fundamental public policy against contracts that seek to restrain employee mobility. California law and policy protects California employees and ensures that every California citizen has the right to pursue lawful employment and enterprises of their choosing. Specifically, California Business and Professions Code Section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

2. Plaintiffs seek a declaration, pursuant to California Code of Civil Procedure Section 1060, that K2's purported non-competition and non-solicitation agreements with Plaintiffs are unlawful restraints of trade, and thus are invalid, unenforceable, and in violation of the fundamental public policy of the State of California. Further, any efforts by K2 to enforce the restrictive covenants violate California law and public policy, and constitute an unlawful business practice and an illegal restraint of trade. Plaintiffs thus seek orders from the Court enjoining K2 from interfering with Molycorp's employment of Plaintiffs.

II. PARTIES

3. Plaintiff Imtiaz Khan ("Khan") was hired by Molycorp to work at its facility in Mountain Pass, California on September 10, 2012 as a full-time employee. Khan currently works for Molycorp in Mountain Pass, California, and resides in Martinez, California. Khan is a resident of Contra Costa County, California

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11. This Court has jurisdiction over Plaintiffs claims pursuant to California Code of Civil Procedure section 410.10 *et seq.*

12. Venue as to K2 is proper in this judicial district pursuant to California Code of Civil Procedure section 395(a) because a substantial part of the events giving rise to the claims herein occurred in Contra Costa County and because K2 resides in Contra Costa County.

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16. Plaintiffs, upon hearing rumors that K2 was planning to lay off each of them, resigned from their positions at K2 in or around September and October 2012 in order to accept secure employment with MolyCorp. Each Plaintiff was independently recruited to work for MolyCorp by MolyCorp or through its agents.

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they will not be employed by "any person or entity which (A) competes with [K2] in the manufacture, processing or distribution of bleach and related chemical products to commercial customers and (B) is located or has operations within 300 miles of any existing plant operated by [K2] or any location [K2] has specifically identified for a future plant." Noncompetition and Confidentiality Agreement, attached as Exhibit A, Section 2(c).

22. The Noncompetition Agreements further require that, for a period of one year following the termination of Plaintiffs' employment, they will not "[s]olicit, hire, recruit, or otherwise engage the services of any person who then currently is, or who at any time during [their] employment with [K2] was, an employee or independent contractor of [K2], or otherwise encourage or induce any such person to discontinue his or her relationship with [K2]." Ex. A, Sec. 2(c).

23. In its letters to Plaintiffs, K2 asserted Plaintiffs were in violation of these covenants and demanded that Plaintiffs abide by the non-compete and non-solicitation provisions.

24. In addition, David Cynamon ("Cynamon"), Executive Chairman at K2, called Khan on October 10, 2012 to urge him to leave his position at Molycorp and to return to his employment at K2. During this call, Cynamon made statements implying that there may be consequences if Khan did not return.

25. Plaintiffs are informed and believe and on that basis allege that K2 intends to prevent Molycorp from employing them and/or intends to seek damages or other relief against Plaintiffs based on the provisions of the Noncompetition Agreements with K2, due to Molycorp's employment of Plaintiffs and due to Plaintiffs' alleged recruitment of one another,

26. The Noncompetition Agreements are unenforceable under California law. K2's threats to enforce the Noncompetition Agreements violate California law and public policy, and constitute an unlawful business practice and an illegal restraint of trade. Furthermore, Plaintiffs did not recruit or solicit any K2 employee, including one another, to leave their employment with K2 to join MolyCorp or anyone else.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief)

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29. K2's Noncompetition Agreements and threats to enforce it are hampering Plaintiffs' ability to carry out the duties and responsibilities of their employment with Molycorp.

30. Plaintiffs contend that the Noncompetition Agreements are invalid and unenforceable as a matter of law under California Business and Professions Code Section 16600, and other provisions of California law. Business and Professions Code Section 16600 provides, in pertinent part, that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Plaintiffs also contend that they do not have any valid contractual or other legal obligation to K2 that would prevent Molycorp from employing any of the Plaintiffs at any time.

31. Plaintiffs are informed and believe, and on that basis allege, that K2 disputes the above contentions and contends otherwise. Accordingly, an actual, present, and justiciable controversy now exists between Plaintiffs and K2 with respect to the rights of Plaintiffs and Molycorp.

32. Plaintiffs are now entitled to a declaration of rights so that the parties will know their rights, duties, and obligations with respect to the Noncompetition Agreements. Plaintiffs request a judicial determination and declaration that their contentions set forth in Paragraph 30 are correct, that California law governs the enforceability of the Noncompetition Agreements, and that the Noncompetition Agreements are invalid and unenforceable under California law.

33. Plaintiffs are further entitled to an order enjoining K2 from interfering with their employment with Molycorp.

SECOND CAUSE OF ACTION

(Declaratory and Injunctive Relief)

34. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 33 of this Complaint as though set forth fully herein.

35. An actual, present, and justiciable controversy now exists between Plaintiffs and K2 with respect to the rights of Plaintiffs and Molycorp.

36. Plaintiffs contend that, to the extent that K2 would attempt to enforce the Noncompetition Agreements under California law to prevent Molycorp from employing Plaintiffs and/or would attempt to seek damages or other relief against Plaintiffs due to Molycorp's employment of Plaintiffs, the Noncompetition Agreement is overbroad and unenforceable because K2 cannot demonstrate that Plaintiffs' employment at Molycorp imperils any legitimate protectable business interests underlying the Noncompetition Agreements.

37. Plaintiffs are informed and believe, and on that basis allege, that K2 disputes the above contentions and contends otherwise.

38. Plaintiffs are now entitled to a declaration of their rights so that the parties will know their rights, duties, and obligations respecting the Noncompetition Agreements and Plaintiffs' employment with Molycorp. Specifically, Plaintiffs are entitled to a declaration that their contentions, as set forth in Paragraph 36 above, are correct.

39. Plaintiffs are further entitled to an order enjoining K2 from interfering with Molycorp's employment of Plaintiffs.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for relief and judgment against K2, as follows:

(a) For a declaration by the Court that: (1) California law governs the enforceability of the Noncompetition Agreements; (2) the Noncompetition Agreements are invalid and unenforceable against Plaintiffs; (3) Plaintiffs may work in their chosen profession; (4) Plaintiffs do not have any valid contractual or other legal obligation to K2 that would prevent Molycorp from employing Plaintiffs at any time; (5) to the extent that K2 would attempt to enforce the Noncompetition Agreements, the

Noncompetition Agreements are overbroad and unenforceable because K2 cannot demonstrate any legitimate protectable business interests underlying the Noncompetition Agreements, and (7) K2 is obligated to comply with Business and Professions Code Sections 16600;

(b) For a preliminary and permanent injunction restraining and enjoining K2 from enforcing the Noncompetition Agreements against Plaintiffs and to cease such unlawful and unfair practices as alleged herein above and proven to the Court at the time of trial;

(c) For restitution;

(d) For attorneys' fees under all applicable statutes and doctrines;

(e) For costs of suit incurred herein; and

(f) For such other and further relief as the Court may deem to be just and proper.

VII. REQUEST FOR EXPEDITED TRIAL DATE

Plaintiffs hereby request an expedited trial date pursuant to California Code of Civil Procedure Section 1062.3.

Dated: October 15, 2012

VALDEZ NOOR TODD & DOYLE LLP

TROY A. VALDEZ

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